

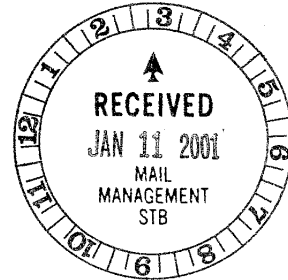
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE
PORT OF PASCAGOULA
JACKSON COUNTY PORT AUTHORITY

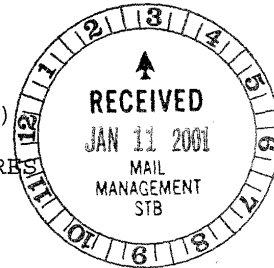
John D. Heffner
Rea, Cross & Auchincloss
Suite 570
1707 L Street, N.W.,
Washington, D.C. 20036
(202) 785-3700

Dated: January 11, 2001

ORIGINAL

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I. INTRODUCTION

By decision served October 3, 2000, the Board initiated this Notice of Proposed Rulemaking (NPRM) proceeding, setting November 17, 2000, December 18, 2000, and January 11, 2001, respectively, as the due dates for filing comments. Consistent with that schedule, the Port of Pascagoula ("POP")¹ filed its initial comments on November 17. POP did not file any comments on December 18 because it was anxious to get a response to its views before making any additional filings. Having reviewed the reply comments submitted by other parties, POP is now prepared to offer its rebuttal.

II. POP's REBUTTAL COMMENTS

As noted in its initial comments, POP operates a port facility at Pascagoula, MS, a city served by two railroads. Of these, CSX Transportation (CSX) is a large class I railroad operating in the eastern half of the country. CSX operates through Pascagoula enroute from New Orleans to Jacksonville (FL)

¹ POP's formal name is the Jackson County Port Authority.

and Cincinnati (OH). The other carrier is the Mississippi Export Railroad (MSE), a north-south class III short line railroad which connects on the north with the Illinois Central Railroad at Evanston, MS, and with CSX at Pascagoula. While POP's facilities are served exclusively by a spur off CSX, POP enjoys access to MSE through CSX's reciprocal switching tariff.

POP's purpose in filing its initial comments in this proceeding was to stress the critical role which ports play in the country's transportation network as well as to emphasize the need for competitive rail service at port facilities. POP went to lengths to note that ports compete vigorously with each other for business and the quantity and quality of available rail service is one of a series of assets which can give one port a competitive edge over others. POP observed that rail carrier actions such as discriminatory pricing, car supply availability, and reciprocal switching practices can affect a port's competitive standing. See, initial comments of the Port of Pascagoula at 6-7.

Generally comments filed by ports including POP received only limited attention from class I railroad commenters. However, the remarks submitted on December 18, 2000, by the Kansas City Southern Railway Company ("KCS") represent a significant exception.² POP believes that KCS' comments strike a

² KCS cites POP's statement that competitive rail service can give one port an advantage over another as support for its proposed rule that merger applicants be required to identify any reciprocal switching arrangements which were cancelled within two years of filing a notice of intent to merge. Reply Comments of

reasonable compromise between the "hardline" views of the Association of American Railroads and its class I railroad members and those of certain rail shippers. Specifically, KCS articulated four principles which it felt represented a fair consensus of the commenting parties. They are:

- (1) The merger rules must preserve competition;
- (2) The merger rules must be more specific;
- (3) The merger rules must provide closer scrutiny of claimed benefits; and
- (4) The merger rules must protect short line and regional railroad interests.

See, Reply Comments of the Kansas City Southern Railway Company at 5-6. POP agrees with KCS' statement of these principles. But for POP, competition, that is rail-to-rail competition, and preservation of essential rail service are the paramount issues.

Regarding competitive issues, POP supports KCS' proposed regulation (cited as 49 CFR 1180.6(b)(15)) which would require an applicant to disclose all stations, facilities, or terminals served by any applicant that were open to reciprocal switching at any time during the 24-month period prior to filing a notice of intent to merge, would establish a rebuttal presumption that favors reinstatement of reciprocal switching at a closed location, and would require the Board to restore switching at such location if closed during that 24-month period. But POP would go one step further. It would require a merger

the Kansas City Southern Railway at 27-8.

applicant to disclose any other commercial arrangement that provides a semblance of rail competition such as haulage agreements, carrier alliances, voluntary cooperation agreements, and so forth and would create a similar rebuttal presumption and requirement to restore a cancelled competitive arrangement. Finally, in line with KCS's other suggestions, POP urges the Board to adopt rules which would require merger applicants to disclose settlement agreements and "paper" and "steel" barriers to the public subject to appropriate protection for confidentiality.

POP recognizes that most of the major class I railroads have vehemently objected to any Board proposal to require certain competitive "enhancements" such as restrictions on gateway closings and reciprocal switching access be included in any merger rules. Should the Board decline to do so, POP urges the Board to initiate an independent rulemaking proceeding to consider these alternate ways to maintain competitive rail access.

Closely related to POP's concern over the preservation of competitive rail service in Pascagoula is its concern that essential rail service be preserved. POP's concern arises in the context of class I service failures which adversely affect the financial health of connecting short line railroads such as MSE.³

³ As noted above, MSE provides an alternate north-south rail service to the City of Pascagoula. Aside from the rail-to-rail competition it offers, MSE also provides the public with an alternate to CSX's congested east-west route.

As the Board is well aware, many short line railroads do not have the financial staying power of larger carriers. While a larger railroad could survive the financial impact of a disruption, a short line railroad deprived of revenues from connecting traffic might be forced to curtail service or even be forced into bankruptcy.⁴ In Pascagoula's case, the loss of MSE could terminate essential rail service to those shippers who are solely dependent upon it as well as eliminate the rail competition MSE provides for the Pascagoula market. Accordingly, the Board needs to formulate a mechanism - either through this NPRM or in a specific merger proceeding - which allows short line railroads affected by traffic loss due to merger-related service breakdowns to recoup lost revenues.⁵

III.

CONCLUSION

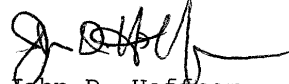
⁴ KCS stated quite correctly, "[s]hortlines and regional railroads, like many shippers, are occasionally caught in the fallout of failed merger planning, and are often left without meaningful recourse when their service deteriorates due to faulty class I railroad connections." Reply Comments of the Kansas City Southern Railway at 7.

⁵ Although some class I railroads have opposed any sort of generalized claims recovery mechanism for short line railroads and shippers, two class I railroads - Burlington Northern And Santa Fe and Union Pacific - have indicated that some form of payment of damages might be appropriate in some cases. See, Reply Comments of the Burlington Northern And Santa Fe Railway Company at 33 ("BNSF is not arguing that no level of damages is ever appropriate in some cases") and Union Pacific's Reply Comments at 11 ("UP continues to recommend that the Board provide a base level of financial protection for shippers who do not negotiate service agreements").

In the interest of brevity, POP concludes by noting that the Board's NPRM raises a whole host of other competitive issues relevant to its interest including rate equalization (or discrimination) between competing ports, bottleneck rates, and gateway issues. These issues deserve attention, if not here, then in a new rulemaking as USDOT appears to suggest. Reply Comments of the United States Department of Transportation at 4. It is crucial to the Board's credibility with the rail shipper community to address these issues either here or in a new proceeding.

POP appreciates the opportunity to present its views in this proceeding.

Respectfully submitted,



John D. Heffner
Rea, Cross & Auchincloss
Suite 570
1707 L Street, N.W.,
Washington, D.C. 20036
(202) 785-3700

Dated: January 11, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing on all known parties of record on the service list on this the 11th day of January, 2001.



John D. Heffner